

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX STEVEN LEWIS,

Defendant and Appellant.

D053814

(Super. Ct. No. SCE277260)

APPEAL from a judgment of the Superior Court of San Diego County, Herbert J. Exarhos, Judge. Affirmed.

Alex Steven Lewis pleaded guilty to one count of robbery (Pen. Code, § 211)¹ and admitted he had two prior serious/violent felony or strike convictions (§ 667, subds. (b)-(i)) and two prior serious felony convictions (§ 667, subd. (a)(1)). After dismissing one strike conviction, the trial court sentenced Lewis to 14 years in prison by imposing the

¹ Statutory references are to the Penal Code.

low term of two years for the robbery doubled under the "Three Strikes" law and two five-year enhancements for the prior serious felony convictions.

Lewis appeals, contending the trial court abused its discretion by not dismissing both prior strike allegations.

FACTS

On June 13, 2008, Lewis entered the Days Inn in La Mesa and demanded money from the front desk clerk, Jonathon Paez. Lewis was wearing a mask and carrying an air gun. Paez, who was under the impression that the air gun was a real gun, gave Lewis \$122, which was in the cash drawer. Lewis also demanded money from the safe and threatened to shoot Paez. There was no safe, and Lewis appeared placated when Paez gave him a couple of envelopes. After Lewis left, he took off his mask, and Paez saw Lewis's face through the window. Paez telephoned the police. Paez identified Lewis at a curbside lineup. Police found an air gun and \$122 in cash in some bushes, where they had observed Lewis throw a bag.

DISCUSSION

Lewis contends the trial court abused its discretion by not dismissing both of his prior strike convictions. The contention is without merit.

Section 1385 permits a trial court, in the furtherance of justice, to strike or vacate an allegation of a prior felony conviction in cases brought under the three strikes law. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) In determining whether to strike a defendant's prior convictions under section 1385, the trial court must consider the defendant's background, the nature of his current offense, and other

"'individualized considerations.'" (*Id.* at p. 531.) In *People v. Williams* (1998) 17 Cal.4th 148, the Supreme Court provided further guidelines for a trial court exercising its discretion under section 1385 in three strike cases and for an appellate court to review such exercise of discretion. In deciding whether to strike a prior conviction, and in reviewing a trial court's ruling, "the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*Id.* at p. 161.)

On appeal, the party attacking the sentence bears the burden "to clearly show the sentencing decision was irrational or arbitrary." (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) "In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." (*Id.* at pp. 977-978.) "Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Here, the trial court considered the probation report, which recited Lewis's extensive criminal history dating back to 1999, when he was adjudged a ward of the juvenile court for a theft offense. Eleven months later, Lewis burglarized a residence. In

Lewis's first crime as an adult, he committed another theft offense the following year and received probation. In 2003, Lewis and a codefendant robbed a motel in Chula Vista and Lewis was given three years' probation; this was his first strike conviction. In 2005, Lewis attempted to rob some teenagers at a mall; this was Lewis's second strike. Again, Lewis was placed on three years' probation. Lewis was on probation on the last two felonies when he robbed the Days Inn.

Lewis's criminal history shows a recidivist pattern of theft and robbery offenses, which until this case was treated with leniency (grants of probation) that apparently had no beneficial effect on Lewis or society. On this record, we find no abuse of discretion in the trial court's refusal to dismiss both strike allegations.

Lewis raises a number of points in arguing he should not have received a strike sentence: his prior strike offenses had a mitigated nature because they were atypical robberies; he had a supportive family; he had an impaired ability to learn; and he had never served time in prison. We are not persuaded. Furthermore, we note the court gave consideration to the factors worthy of mitigation and chose not to impose a life sentence by dismissing one of the strikes. There was no abuse of discretion.

DISPOSITION

The judgment affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.